

NATIONAL
INDIAN
GAMING
COMMISSION

APR 11 1994

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Santa Fe, New Mexico 87501

Dear Mr. Bladh:

This letter responds to your request to review and approve the tribal gaming ordinance adopted by the Jicarilla Apache Tribe (Tribe) on March 24, 1994. This letter constitutes such approval under the Indian Gaming Regulatory Act (IGRA).

Under the IGRA and the regulations of the National Indian Gaming Commission (NIGC), the Chairman is directed to review ordinances with respect to the requirements of the IGRA and the implementing regulations. Thus, the scope of the Chairman's review and approval is limited to the requirements of the IGRA and the NIGC regulations. Provisions other than those required under the IGRA or the NIGC regulations that may be included in a tribal ordinance are not subject to review and approval. Also, such approval does not constitute approval of specific games.

It is important to note that the gaming ordinance is approved for gaming only on Indian lands as defined in the IGRA.

With the Chairman's approval of the Tribe's gaming ordinance, the Tribe is now required to conduct background investigations on its key employees and primary management officials. The NIGC expects to receive a completed application for each key employee and primary management official pursuant to 25 C.F.R. § 556.5(a) and an investigative report on each background investigation before issuing a license to a key employee or primary management official pursuant to 25 C.F.R. § 556.5(b). Please note that the NIGC cannot process any fingerprint cards until the Tribe submits a Memorandum of Understanding to the NIGC.

Thank you for submitting the ordinance of the Jicarilla Apache Tribe for review and approval. The NIGC staff and I look forward to working with you and the Tribe in implementing the IGRA.

Sincerely yours,

Anthony J. Hope

Anthony J. Hope
Chairman

cc: Derril B. Jordan, Esq.



THE JICARILLA APACHE TRIBE

P.O. BOX 507 • DULCE, NEW MEXICO 87528

(505) 759-3242

ORDINANCE OF THE TRIBAL COUNCIL

Ordinance No. 94-0-384-3

Re: **Gaming Regulation**

WHEREAS, the inherent powers of the Jicarilla Apache Tribe are vested in the Jicarilla Apache Tribal Council pursuant to Article XI, Section 1 of the Revised Constitution of the Jicarilla Apache Tribe; and

WHEREAS, the Jicarilla Apache Tribal Council is authorized by Article XI, Section 1 of the Revised Constitution of the Jicarilla Apache Tribe to enact ordinances to promote the health and general welfare of the people of the Jicarilla Apache Reservation; and

WHEREAS, the Tribal Council has the power to authorize and regulate subordinate organizations for economic and other purposes; and

WHEREAS, the Jicarilla Apache Tribe has the inherent authority to authorize and regulate gaming activities on Tribal lands, subject to applicable federal laws; and

WHEREAS, the Tribal Council finds that it is in the best interest of the Tribe to enact a gaming ordinance to authorize and regulate gaming on Tribal lands consistent with applicable federal laws.

NOW, THEREFORE, BE IT ORDAINED that the Tribal Council of the Jicarilla Apache Tribe hereby adopts the following ordinance to be codified as Title 18, Chapter 5 of the Jicarilla Apache Tribal Code:





THE JICARILLA APACHE TRIBE

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SECTION 1. DEFINITIONS. For purposes of this ordinance:

- (a) "Act" means the Indian Gaming Regulatory Act, Pub.L. No. 100-497, 25 U.S.C. §§ 2701 et seq., and applicable regulations promulgated under the Act.
- (b) "Board" means the Jicarilla Apache Gaming Board established by this ordinance.
- (c) "President" means the President of the Jicarilla Apache Tribe.
- (d) "Chairman of the Board" means the Chairman of the Jicarilla Apache Gaming Board established by the ordinance.
- (e) "Class I gaming" means class I gaming as defined in the Act.
- (f) "Class II gaming" means class II gaming as defined in the Act.
- (g) "Class III gaming" means class III gaming as defined in the Act.
- (h) "Commission" means the National Indian Gaming Commission established under the Act.
- (i) "Compact" means any Tribal-State Gaming Compact between the Tribe and the State governing class III gaming.
- (j) "Council" means the Jicarilla Apache Tribal Council, the governing body of the Jicarilla Apache Tribe, duly elected in accordance with the Constitution of the Jicarilla Apache Tribe.
- (k) "Electronic game of chance" means a microprocessor-controlled electronic device that allows a player to play games of chance, some of which are affected by skill, which device is activated by the insertion of a token, coin or currency, or by the use of a credit, and which awards game credits, cash, tokens, or replays, or a written statement of the player's accumulated credits, which written statements are redeemable for cash. Game play may be displayed by video facsimile

[SECTION 1(k), continued]

or mechanical rotating reels whereby the software of the device predetermines the stop positions and the presence, or lack thereof, of a winning combination and payout, if any.

(l) "Key employees" means any natural person employed by a gaming operation or management contractor and

(1) who performs one or more of the following functions:

- (i) Bingo caller;
- (ii) Counting room supervisor;
- (iii) Chief of security;
- (iv) Custodian of gaming supplies or cash;
- (v) Floor manager;
- (vi) Pit boss;
- (vii) Dealer;
- (viii) Croupier;
- (ix) Custodian of gambling devices including persons with

access to cash and accounting records within such devices;

(2) If not otherwise included, any other person whose total cash compensation is in excess of \$50,000 per year; or

(3) If not otherwise included, the four most highly compensated persons in the gaming operation.

(m) "Gaming device" or "gaming equipment" means any equipment or mechanical, electromechanical, or electronic contrivance, component, or machine used remotely or directly in connection with gaming.

[SECTION 1(n)]

(n) "Gaming facility" means the building, or room in which class II, or class III gaming is conducted on Tribal lands.

(o) "Gaming operation" means an enterprise owned by the Tribe for the conduct of class II or class III gaming in any gaming facility on Tribal lands.

(p) "Gaming services" means the providing of any goods, services or concessions by contract to the Tribal gaming operation, or management contractor in connection with the operation of gaming in a gaming facility in an amount in excess of \$10,000 monthly, except for professional, legal or accounting services. No contract may be broken up into parts for the purpose of avoiding this definition and any requirement of licensure or certification.

(q) "Net revenues" means gross revenues of gaming activity less amounts paid out as, or paid for, prizes and total gaming related operating expenses, but excluding management fees paid to a management contractor. Operating expenses include but are not limited to annual fees paid to the Commission, utilities costs, insurance costs, advertising costs, labor and other personnel costs attributable to gaming, repair costs, maintenance costs, costs of supplies, security services costs, janitorial services costs, trash removal costs, taxes, rent, travel costs related to the gaming operation, lawyers' and accountants' fees, fees paid to independent auditors, and such other deductions or charges as may be specifically authorized hereunder.

(r) "Ordinance" means this Jicarilla Apache Gaming Ordinance.

(s) "Person" means any individual, partnership, corporation, company or other legal entity.

[SECTION 1(t)]

(t) "Primary management official" means

(1) The person having primary responsibility for a management contract in that he/she is designated by the management contract as having management responsibility for the gaming operation or a portion thereof;

(2) Any person who has authority:

(i) To hire and fire employees;

(ii) To set up working policy for the gaming operation; or

(iii) The chief financial officer or other person who has financial management responsibility.

(u) "Secretary" means the Secretary of the Interior or his duly authorized representative.

(v) "State" means the State of New Mexico, its authorized officials, agents and representatives.

(w) "Tribe" means the Jicarilla Apache Tribe, its authorized officials, agents and representatives.

(x) "Tribal Court" means the Jicarilla Apache Tribal Court.

(y) "Tribal lands" means all lands within the exterior boundaries of the Jicarilla Apache Reservation and any lands title to which is either held in trust by the United States for the benefit of the Tribe or held by the Tribe subject to restriction by the United States against alienation and over which the Tribe exercises governmental power.

SECTION 2. PURPOSE. The purpose of this ordinance is to make lawful and to regulate the operation, conduct, and playing of games of chance on Tribal lands, to produce revenue to fund tribal governmental operations and programs, to promote the health, education, and welfare of the Jicarilla Apache Tribe and its members, to promote tribal economic development, and to fund other lawful activities.

SECTION 3. NATURE AND SCOPE OF GAMING ACTIVITIES.

(a) Authorized Gaming Activities. A gaming operation may operate in its gaming facility only those forms of gaming authorized by the license issued by the Board.

(b) Forms of Payment. All payment for wagers made in gaming conducted by the gaming operation shall be made by cash, chips, or tokens. The gaming operation shall not extend credit. Chips or tokens may be purchased using cash or checks.

(c) Wagering Limitations. The Board shall set by regulation the maximum wager for each class and form of gaming conducted pursuant to a license.

(d) Hours of Operation. A gaming operation may operate its gaming activities only during the hours and days approved by the Board.

(e) Prohibition on Minors. No person under the age of 18 shall participate in any gaming; however, minors may be employed in food, beverage (non-alcoholic), maintenance and service of a gaming operation.

SECTION 4. COMPLIANCE WITH THE ACT. This ordinance shall be construed in a manner that conforms to the Act in all respects, and, if inconsistent with the Act in any manner, the provisions of the Act shall govern.

[SECTION 4(a)]

(a) Proprietary Interest. The Tribe shall have the sole proprietary interest in and responsibility for the conduct of any class II or class III gaming on Tribal lands; however, nothing herein shall prevent the Tribe from entering into a management contract for the operation and management of any gaming activity.

(b) Use of Net Revenues. Net revenues from any class II or class III gaming shall be used exclusively for one or more of the following purposes:

- (1) to fund tribal government operations or programs;
- (2) to provide for the general welfare of the Tribe and its members;
- (3) to promote tribal economic development;
- (4) to donate to charitable organizations;
- (5) to help fund operations of local government agencies;
- (6) to make per capita payments to members of the Tribe to the extent provided in a plan approved by the Secretary pursuant to 25 U.S.C. § 2710(b)(3); or
- (7) any other purposes permitted under the Act.

(c) Annual Audit. Any gaming operation shall be subject to an annual audit by independent certified public accountants selected by the Board. Copies of the annual audit shall be sent to the Commission within 120 days after the end of each fiscal year of the gaming operation. All gaming related contracts that result in purchases of supplies, services, or concessions for more than \$25,000 in any year (except contracts for professional legal or accounting services) shall be included within the scope of the annual audit.

[SECTION 4(d)]

(d) Public Safety Standards. All gaming facilities shall be constructed, maintained and operated in a manner that adequately protects the environment and the public health and safety and complies with all applicable health, safety and environmental standards imposed by federal or tribal law.

(e) Licensing Requirements. Each of the following entities and individuals shall be required to have and display prominently, or display upon request, an appropriate, valid, and current Jicarilla Apache Gaming license issued pursuant to the provisions of this Ordinance. All entities and individuals required to be licensed by this Ordinance must be issued a license prior to engaging in any gaming activity requiring a license and all gaming devices and equipment must be licensed prior to their use in a gaming facility.

(1) Gaming Operations and Facilities. Each place, facility or location at which class II or class III gaming is conducted shall be separately licensed by the Board. No license shall be required by class I gaming.

(2) Personnel. All primary management officials and key employees of a class II or class III gaming operation shall be licensed by the Board and subject to background investigations as provided in this Ordinance. All other employees of a class II or class III gaming operation shall be licensed by the Board as provided in Section 4(f)(3) of this Ordinance.

(3) Sale or Lease of Gaming Devices, Equipment or Services. Any person proposing to sell, lease or otherwise distribute any gaming device or equipment or gaming services for use on Tribal lands shall be licensed by the Board and subject to background investigations before selling or leasing any such gaming device, equipment or services for use on Tribal lands.

[SECTION 4(e)(4)]

(4) Gaming Devices and Equipment. Each gaming device, including any electronic game of chance, and all gaming equipment shall be licensed by the Board and shall be inspected and certified for proper operation at least annually by an inspector approved by the Board.

(f) Licensing Procedures.

(1) Class II or Class III Gaming Operations and Facilities

(i) Each applicant for a license for a gaming operation and facility shall submit a completed application consisting of a proposed management agreement with the Tribe which complies with the requirements of this Ordinance.

(ii) Each applicant for a license for a gaming facility shall submit documentation demonstrating that the facility complies with any and all applicable building codes and other applicable public safety, health, and environmental laws or regulations.

(2) Key Employees and Primary Management Officials

(i) Each person applying for a license as a key employee or primary management official shall submit a completed application indicating the type of gaming activity (class II or class III or both) for which the license is sought and any other information required by the Board, which information shall include but not be limited to the following:

1) Full name, other names used (oral or written), social security number(s), birth date, place of birth, citizenship, gender, all languages (spoken or written);

[SECTION 4(f)(2)(i)-2)]

2) Currently and for the previous five years: business and employment positions held, ownership interests in those businesses, business and residence addresses, and drivers license numbers;

3) The names and current addresses of at least three personal references, including one personal reference who was acquainted with the applicant during each period of residence listed under paragraph (a)(2) of this section;

4) Current business and residence telephone numbers;

5) A description of any existing and previous business relationships with Indian tribes, including ownership interests in those businesses;

6) A description of any existing and previous business relationships with the gaming industry generally, including ownership interests in those businesses;

7) The name and address of any licensing or regulatory agency with which the person has filed an application for a license or permit related to gaming, whether or not such license or permit was granted;

8) For each felony for which there is an ongoing prosecution or a conviction, the charge, the name and address of the court involved, and the date and disposition if any;

9) For each misdemeanor conviction or ongoing misdemeanor prosecution (excluding minor traffic violations) within 10 years of the date of the application, the name and address of the court involved and the date and disposition;

[SECTION 4(f)(2)(i)-10]

10) For each criminal charge (excluding minor traffic charges) whether or not there is a conviction, if such criminal charge is within 10 years of the date of the application and is not otherwise listed pursuant to paragraph 8 or 9 of this section, the criminal charge, the name and address of the court involved and the date and disposition;

11) The name and address of any licensing or regulatory agency with which the person has filed an application for an occupational license or permit, whether or not such license or permit was granted;

12) A current photograph;

13) Any other information the Board deems relevant;

14) Fingerprints taken by the Jicarilla Apache Police Department or other law enforcement agency approved by the Board.

(ii) The application form shall include the Privacy Act notice required by 25 C.F.R. § 556.2(a) and the notice concerning false statements required by 25 C.F.R. § 556.3(a).

(iii) Each applicant shall provide a complete financial statement, in the form adopted by the Board, including his or her income for the previous five years and the sources of that income as well as all assets and debts of the applicant at the time of application. The financial statement shall include copies of all federal income tax returns filed by the applicant during the previous five years.

(iv) Each applicant shall provide a complete medical history covering the prior ten years, including any treatment for mental or medical disorders, drug or alcohol abuse or addition, or any other medical, psychological or mental

[SECTION 4(f)(2)(iv), continued]

condition which could affect the applicant's suitability for employment in a gaming operation.

(3) Other Employees of Class II or Class III Gaming Operations. Each person applying for a license as an employee not licensed under Section 4(f)(2) of this Ordinance shall submit a completed application providing the information required by the Board, which information shall include but not be limited to the following:

(i) Full name, other names used (oral or written), social security number(s), birth date, place of birth, citizenship, gender, residence address, drivers license number;

(ii) Current and prior employment positions held during the previous three years;

(iii) The names and current addresses of at least two personal references;

(iv) A description of any existing and previous relationship with the gaming industry;

(v) The name and address of any licensing or regulatory agency with which the person has filed an application for a license or permit related to gaming, whether or not such license or permit was granted; and

(vi) Any other information the Board deems relevant.

(4) Sale or Lease of Gaming Devices, Equipment or Services.

(i) The application for any person, organization or entity wishing to sell, lease, or otherwise distribute gaming devices, equipment or services for use on lands of the Tribe shall contain the following information:

[SECTION 4(f)(4)(i)-1]

1) Full name, other names used (oral or written), social security number(s), birth date, place of birth, citizenship, gender, residence and business addresses, and drivers license number of the person or entity making the application;

2) The name(s) and residence and business addresses of all interested parties (including those with a direct or indirect financial interest) and their interest and connection with the applicant;

3) The type of activity to be engaged in under the license;

4) For each person identified in 1) and 2) above, the information concerning any criminal record described in Section 4(f)(2)(i)(8), (9) and (10).

5) The applicant's history of licensure as a distributor or manufacturer of gaming devices and/or equipment in any state in which the applicant has been or is currently licensed as a valid distributor and/or manufacturer. Such history shall include dates that licenses were granted, revoked, or suspended and the reasons for any revocation or suspension;

6) A statement authorizing the Tribe to conduct a background investigation of the applicant and any other person identified in 1) or 2) above.

(ii) The application form shall include the Privacy Act notice described in 25 C.F.R. § 556.2(a) and the notice concerning false statements described in 25 C.F.R. § 556.3(a).

[SECTION 4(f)(5)]

(5) Gaming Devices and Equipment

(i) In addition to any other license required by this Ordinance, the person licensed to operate a gaming device or equipment shall apply for an annual non-transferable license for each gaming device or piece of gaming equipment to be placed in a gaming operation located on Tribal land. The application shall contain the following information:

- 1) the name and address of the applicant;
- 2) identification numbers or codes for each gaming device or piece of gaming equipment placed in a gaming facility, including the manufacturer, the serial number and model number;
- 3) proof of approval and certification of the machine by an approved gaming test laboratory or proof that the gaming device or equipment conforms precisely to the exact specifications of the gaming device prototype tested and approved by the gaming test laboratory;
- 4) any other information required by federal law, tribal law, or the Board.

(g) Background Investigations of Key Employees and Primary Management Officials. Upon receipt of a completed application and the fees required for a license under Section 4(f)(2) of this Ordinance, the Board

(1) will submit all pertinent information to the New Mexico State Police and to the National Indian Gaming Commission (Commission) for a thorough criminal history check. If the Commission has conducted a background investigation of the same individual within the prior six months, the Board may use that investigation. The background investigation shall be conducted pursuant to Privacy

[SECTION 4(g)(1), continued]

Act procedures set forth at 25 C.F.R. § 515. The identity of each person interviewed in the course of the investigation shall be kept confidential by the Board and all agents of the Tribe who participate in the investigation.

(2) shall verify by written or oral communication all information submitted by applicants as part of their license application. Particular attention shall be given to verification of the following information: existing and previous business relationships within the gaming industry; licenses or permits or applications for licenses or permits related to the gaming industry; existing and previous business relationships with Indian tribes; and all felony and misdemeanor convictions and ongoing prosecutions (not otherwise accounted for through the criminal history check provided for in Section A above).

(3) shall interview by written or oral communication at least two (2) of the personal references and at least five (5) of the business and employment references provided by an applicant. If an applicant has supplied less than five (5) business or employment references, all shall be interviewed.

(4) Upon completion of the necessary background investigation, including the verification of application information and the interview of references, the Board shall review the applicant's prior activities, criminal record, if any, and reputation, habits and associations, to make a finding concerning eligibility for a license under the standards established by this Ordinance.

(5) If the Board determines the applicant is not eligible for employment in a gaming operation, the Board shall send the applicant a statement setting forth the grounds for denial of the application for license. A copy of such statement and the investigative report, if any, shall be sent to the Commission.

[SECTION 4(g)(6)]

(6) If the Board determines the applicant is eligible for employment in a gaming operation, the Board shall forward a report to the Commission. Such report shall include the following: (1) Steps taken in conducting the background investigation; (2) results obtained; (3) conclusions reached; (4) the bases for those conclusions; (5) a copy of the Board's determination of eligibility for the employment.

(7) If the Commission requests additional information regarding a license applicant pursuant to 25 CFR § 558.3(c), the Board shall supply the requested information to the Commission.

(h) Granting of License to Key Employees and Primary Management Officials.

(1) If, within the 30-day period after the Commission received the Board's report of eligibility described in Section 4(g)(3) of this Ordinance, as determined under 25 C.F.R. § 558.3(c), the Commission notifies the Board that it has no objection to issuance of a license to the person identified in the report, the Board may issue the license to the applicant if all requirements of this Ordinance have been met. If the Commission requests additional information regarding a license applicant pursuant to 25 CFR § 558.3(c), the running of the 30-day period shall be suspended until the Commission receives the requested additional information.

(2) If, within the 30-day period described in Section 4(h)(1) of this Ordinance, the Commission notifies the Board of its objections to issuance of a license to the person identified in the report, the Board shall reconsider its determination of eligibility for employment, taking into account the objections stated by the Commission. After such reconsideration the Board may issue the license to the applicant if all requirements of this Ordinance have been met.

[SECTION 4(i)]

(i) Granting of All Other Licenses. With regard to the issuance of all other licenses as required by Section 4(e), the Board may issue the license at any time after the Board determines the application is complete and all requirements of this Ordinance have been met.

(j) License Required. No person shall be employed by a gaming operation unless they have first been issued a license by the Board. No vendor of gaming devices or gaming equipment or gaming services shall provide such to a gaming operation or gaming facility unless a license has been obtained by the vendor.

(k) License Denials. The Board may not issue a license to any person who:

(1) has provided materially false or misleading statements to the Board and/or the Commission or has omitted material information from his or her application, or has refused to respond to all requests by the Board and/or Commission for information concerning the applicant's background and activities;

(2) has not attained the age of twenty-one (21) years;

(3) is an elected or appointed official of the Tribe;

(4) has been convicted of any felony, gaming offense, or any misdemeanor involving theft or conversion of property;

(5) is a person whose prior activities, criminal record if any, or reputation, habits, associations, or psychological or medical condition pose a threat to the public interest or to the effective regulation and control of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of gaming or the carrying on of the business and financial arrangements incidental thereto; or

[SECTION 4(k)(6)]

(6) has attempted to interfere or to influence, and/or has interfered and/or influenced, unduly for gain or advantage, any decision or process of the Board or the Jicarilla Apache Tribal government relating to gaming. Undue influence means the use of bribery, blackmail, intimidation, threats of violence, or other improper means to influence tribal governmental actions. Nothing in this section shall be interpreted as preventing primary management officials and key employees of a gaming operation from expressing their opinions to and consulting with members of the tribal government or responding to inquiries or requests from the Board or the Council.

(l) Duration and Renewal of Tribal Licenses. Any license issued by the Board shall be effective for one year from the date of issuance. An applicant for renewal who has submitted the required application and any other information required by the Board at least sixty (60) days before the expiration of his license may continue to be employed under the expired license or until final action is taken on the renewal application by the Board or, if required by the Act, the Commission. Applicants for renewal of licenses shall provide updated material and information as requested on the appropriate renewal forms, but shall not be required to resubmit historical data already provided or otherwise available to the Board.

(m) Identification Cards. The Board shall require all gaming employees to wear identification cards issued by the Board which shall include the employee's photograph, first and last name, license number, signature, type of gaming authorized (class II or class III or both) and date of expiration.

(n) Fees for Licensing. The fees for licensing and the amount required to be deposited for background investigations shall be set by the Board. Should actual

[SECTION 4(n), continued]

costs incurred by the Board for a background investigation exceed the amount deposited, those costs will be assessed to the applicant during the investigation process, provided that in such cases the Board shall submit a detailed billing of such costs and an explanation as to why such excess costs were incurred. Payment in full of any required fee will be required at the time the application is submitted.

(o) Licensure of Existing Gaming Operations and Employees. Any person engaged in gaming activities requiring a license under this Ordinance at the time this Ordinance is enacted by the Tribal Council must apply for the appropriate license from the Board within 30 days of Tribal Council enactment. The Board shall promptly initiate background investigations required by this Ordinance and shall forward a report to the Commission regarding each such applicant within 60 days after the Chairman's approval of this Ordinance.

(p) Record Retention. The Board shall retain applications for employment for primary management officials and key employees, and any reports of background investigations on such applicants, for no less than three years following the date of termination of the applicant's employment, and shall make such records available for inspection by the Commission pursuant to lawful requests submitted to the Board. The Board by regulation may impose additional record retention requirements, consistent with this Ordinance.

SECTION 5. STANDARDS OF OPERATION AND MANAGEMENT.

(a) Class III Gaming. The technical standards of operation and management for Class III gaming shall be those as adopted in accordance with a tribal-state compact. Should compact negotiations fail or become unnecessary, the

[SECTION 5(a), continued]

Board may, with Tribal Council approval, adopt standards of operation and management for Class III gaming.

(b) Class II Gaming. The Board shall adopt standards of operation and management for class II gaming, subject to approval by the Council, and pending such adoption, may direct the gaming operation to comply with the standards as the Board may determine necessary to protect the integrity of class II gaming.

SECTION 6. MANAGEMENT CONTRACTS.

(a) Requirement for Review and Appeal. The Board may enter into a management contract for the management of a class II and/or class III gaming operation and facilities subject to approval of the Commission. No management contract, and no modification, revision, or amendment thereto, shall be binding upon the Jicarilla Apache Tribe unless and until approved by the Council and the Commission. Background investigations for persons or entities with a financial interest in or having management responsibility for a management contract shall be conducted by the Chairman of the Commission.

(b) Required Provisions.

(1) Governmental Authority. All gaming covered by a management contract shall be conducted in accordance with the Act and all governing tribal ordinances, including this Ordinance.

(2) Responsibilities. The management contract shall identify the responsibilities of each party for each identifiable function as set forth in the Act and regulations promulgated pursuant to the Act.

[SECTION 6(b)(3)]

(3) Accounting. The management contract shall provide for the establishment and maintenance of satisfactory accounting systems and procedures that shall, at a minimum:

- (a) include an adequate system of internal accounting controls;
- (b) permit the preparation of financial statements in accordance with generally accepted accounting principles;
- (c) be susceptible to audit;
- (d) allow a class II gaming operation, the Tribe and the Commission to calculate the annual fee due the Commission under the Act;
- (e) permit the calculation and payment of the manager's fee; and
- (f) provide for the allocation of operating expenses among the Tribe, the tribal gaming operation, the contractor, and any other user of shared facilities and services.

(4) Reports. A management contractor at its own cost and expense shall provide a monthly verifiable financial report to the Tribe, Board, and if required by the Act, the Secretary and/or Commission.

(5) Access. A management contractor shall allow immediate access to the gaming operation and facilities, including its books and records, to individuals designated by Tribal Council resolution, the Tribal Gaming Board, the Secretary of Interior, or the Federal Indian Gaming Commission, who shall have the right to verify the daily gross revenues and income from any gaming activity and access to any other gaming-related information that the Tribe, Board, Secretary or Commission deems appropriate.

[SECTION 6(b)(6)]

(6) Guaranteed Minimum Payment. All management contracts shall provide for a minimum guaranteed monthly payment to the Tribe in a sum certain that has preference over the retirement of any development and construction costs.

(7) Development and Construction Costs. All management contracts shall provide for an agreed upon maximum dollar amount per month of revenues for recoupment of development and construction costs.

(8) Term. No management contract shall be for a term exceeding five (5) years unless upon request of the Board, the Commission authorizes a longer contract term in which event the term shall not exceed seven (7) years.

(9) Compensation. All management contracts shall describe in detail the method of compensating and reimbursing the management contractor. If a management contract provides for a percentage fee, such fee shall be not more than thirty percent (30%) of the net revenues of a gaming operation unless a higher percentage, not to exceed forty percent (40%) is authorized by the Council and by the Commission pursuant to the Act. The balance of the net revenues shall be paid to the Treasurer of the Tribe or as directed in the management contract.

(10) Termination. All management contracts shall provide grounds and mechanisms for modifying or terminating the management contract.

(11) Disputes. All management contracts shall include a mechanism to resolve disputes between the Tribe and the management contractor, the management contractor and gaming employees and consistent with the procedures in Section 7(f)(13) of this Ordinance, the management contractor and customers.

(12) Assignments and Subcontracting. All management contracts shall indicate that assignment of rights under a management contract and subcontracting

[SECTION 6(b)(12), continued]

are not permitted unless approved by the Board and the Chairman of the Commission.

(13) Ownership Interest. All changes in the ownership interest in a management contractor shall require advance approval of the Board.

(14) Effective Date. All management contracts shall state that the contract shall not be effective unless and until it is approved by the Chairman, date of signature of the parties notwithstanding.

(15) Prohibited Provisions. A management contract shall not transfer or in any other manner convey any interest in Tribal lands unless authorized by federal law and unless clearly specified in writing in said management contract.

SECTION 7. TRIBAL GAMING BOARD.

(a) Establishment of the Board, Appointment; Term. There is hereby established a Board consisting of three members who shall be appointed by the President with the approval of the Council to serve on a part-time basis for a term of three years commencing on the date of their appointment. The President shall appoint one Board member to serve as the Board Chairman.

(b) Compensation. The compensation of members of the Board shall be established by the Council.

(c) Removal. The Council by a majority vote may remove any Board member for any reason at any time with or without cause.

(d) Vacancies. The President, with the approval of the Council, may by appointment fill any vacancies in the Board.

(e) Qualifications. No person shall be eligible or qualified to serve or continue to serve on the Board who:

[SECTION 7(e)(1)]

(1) Has been convicted of a felony, gaming offense or a misdemeanor involving theft or conversion of property;

(2) Has any direct financial interest in, or management responsibility for, any gaming activity; or

(3) Has any direct financial interest in, or management responsibility for, any management contract submitted to the Council for review or approval.

(f) Powers and Duties of the Board. The Board shall have the following powers and duties:

(1) Oversight of Gaming Operation; Inspectors; Recommendations to Council. The Board shall have primary responsibility for oversight to assure the integrity of all class II and class III gaming operations and shall, for that purpose, employ inspectors who shall be under the sole supervision of the Board and not under the supervision of any management contractors or gaming operation. The inspectors shall have access to all areas of the gaming facilities at all times. The inspectors shall report to the Board regarding any failure by the gaming operation or management contractor to comply with any of the provisions of this Ordinance and any other applicable laws. All inspectors shall be licensed by the Board and be subject to background investigations. The Board shall be responsible for making recommendations to the Council concerning any and all matters related to gaming activities within tribal lands.

(2) Investigations; Subpoena. The Board may on its own initiative investigate any aspect of a gaming operation to protect the public interest in the integrity of the gaming activities and to prevent improper or unlawful conduct in the course of any gaming activities. The Board may require the gaming operation or any

[SECTION 7(f)(2), continued]

management contractor to take any appropriate action deemed necessary to comply with this Ordinance, the Act, or other applicable law. The Board may compel any person to appear before it and to provide such information, documents or other materials as may be in their possession to assist in any such investigation.

(3) Public Safety. The Board shall ensure that all gaming operations or management contractors shall prepare and submit for review and approval of the Board a satisfactory plan for the protection of the public in the gaming facilities.

(4) Review of Plans. The Board shall review and approve floor plans and surveillance systems for each gaming facility and may confer with other organizations regarding the adequacy of such plans and systems.

(5) Regulations. The Board may promulgate regulations to govern the operation and management of class II and class III gaming activities. Regulations promulgated by the Board shall be effective after they have been approved by the Council.

(6) Licenses. The Board may issue, suspend and revoke licenses in accordance with this Ordinance. The Board shall also conduct or cause to be conducted background investigations of persons involved, directly or indirectly, in the operation or conduct of games of chance on Tribal lands, as provided in this Ordinance.

(7) Standards. The Board shall promulgate, review, and revise the technical standards and rules of each game operated by the gaming operation or management contractor and shall notify the gaming operation and management contractor of the rules and of any change to the rules.

[SECTION 7(f)(8)]

(8) Health and Safety Standards. The Board shall enforce the health and safety standards applicable to the gaming facilities in accordance with this ordinance and other applicable laws. Before the opening of any gaming facility for gaming activity, the gaming operation or management contractor shall obtain a certificate of compliance from the Board relating to the gaming facilities. The Board shall issue a certificate of compliance to the gaming operation upon a determination that the gaming facilities comply with applicable health and safety standards.

(9) Penalties and Subpoenas. The Board is empowered to impose penalties for violations of this Ordinance in amounts to be established by regulations adopted by the Board and approved by the Council, and is empowered to issue subpoenas in furtherance of its duties.

(10) Civil and Criminal Actions. The Board may in the name of the Tribe bring any civil action in the courts of the Tribe, the State or the United States of competent jurisdiction to enforce the provisions of this Ordinance, the Act or any Compact, or to enjoin or otherwise prevent any violation of this Ordinance, the Act or applicable law, occurring on Tribal lands. The Board may also refer suspected criminal violations of this Ordinance, the Act, or applicable law to the appropriate governmental authority for investigation and prosecution.

(11) Budget. The Board shall adopt an annual operating budget which shall be subject to the approval of the Council and may in accordance with the budget employ a staff as it deems necessary to fulfill its responsibilities under this Ordinance, and may retain legal counsel, consultants and other professional services, including investigative services, to assist the Board with respect to any of the issues over which the Board exercises jurisdiction. The expenses of the Board in accordance with such

[SECTION 7(f)(11), continued]

budget shall be appropriated by the Council from the net gaming revenues paid to the Tribe or from other sources identified by the Council.

(12) Orders; Review by Tribal Court. The Board may issue an order or decision which the Board has the power to issue, to the gaming operation, any gaming employee, or management contractor, or to any other person within the jurisdiction of the Tribe, to take any action or cease and desist from any action as may be required to protect to the public interest in gaming. Any final order or decision of the Board shall be subject to review by the Tribal Court, which decision shall be appealable to the Court of Appeals according to the Revised Constitution of the Jicarilla Apache Tribe and subject to Section 14 of this Ordinance.

(13) Customer Complaints. The Board shall establish procedures for the resolution of disputes between a gaming operation or management contractor and a customer concerning the conduct of the gaming activities. The procedures shall be established by regulation of the Board approved by the Council, and notice of the procedures shall be posted in a conspicuous location within the gaming facility at all times gaming activities are conducted. The Board's resolution of the dispute shall be appealable to the Tribal Court, and the Board's decision shall be upheld if it is supported by substantial evidence and is in conformity with applicable law.

(g) Hearings. The Board may conduct any hearing, investigation or inquiry, compel the production of any information or documents, and otherwise exercise the investigatory powers necessary to carry out the duties assigned under this Ordinance.

(h) Director. The Board may appoint and retain an individual to serve as Director of the Board to administer and enforce its responsibilities as necessary to

[SECTION 7(h), continued]

oversee inspectors appointed by the Board and other staff as the Board may employ, conduct hearings, investigations, and otherwise act on behalf of the Board as authorized by the Board. The Director shall be responsible for coordination of the functions of the Board and other tribal, federal, state, and local agencies as necessary.

(i) Procedures of the Board

(1) Regular Meetings. Regular meetings of the Board may be held upon specified dates to be established by the Board, and at such time and place as shall from time to time be fixed by the Board. Unless otherwise specified by the Board, no notice of such regular meetings shall be necessary.

(2) Special Meetings. Special meetings of the Board may be called by the Chairman of the Board or may be held by teleconference or by polling. The Chairman of the Board shall fix the time and place of the special meeting. Neither the business to be transacted at, nor the purposes of, any regular or special meeting of the Board need to be specified in the notice of the meeting.

(3) Quorum. At any meeting of the Board, a majority of the Board members shall constitute a quorum for the transaction of business. The vote of a majority of the members present at a meeting at which a quorum is present shall be the act of the Board. The Chairman of the Board shall preside at all meetings of the Board unless the Chairman of the Board designates another member to preside in his absence. Approval of action telephonically or by polling is also authorized.

(4) Notice and Hearings.

(i) Suspension. If, in the Board's judgment based on information from any source including but not limited to the Commission, immediate suspension

[SECTION 7(i)(4)(i), continued]

of a license is required to protect the public interest, the effective regulation and control of gaming, or the safe, fair and honest operation and conduct of games of chance, the Board may suspend a license immediately pending the holding of a hearing. The Board shall suspend the license of a key employee or primary management official upon receipt of notice from the Commission that the person is no longer eligible for employment in that capacity, or upon receipt of information from any other source that the person is no longer eligible for employment in that capacity. A revocation hearing must be held within fourteen (14) calendar days of such suspension or the suspension will be deemed discharged automatically.

(ii) Revocation. No action of the Board to revoke a license previously issued by the Board, shall be valid unless the person affected is given at least seven (7) calendar days' notice of the proposed action and the opportunity to appear and to be heard before the Board, either in person or through a representative or legal counsel, and to submit such evidence as the Board deems relevant to the matter at issue.

(iii) License Denials and Barred Individuals. Any person who is denied a gaming license or who is barred from the gaming facilities by action of the Board may request a hearing before the Board by written request submitted within thirty (30) days following receipt of notice of the action of the Board, and the Board shall thereupon afford an opportunity to appear and be heard before the Board, either in person or through a representative or legal counsel, and to submit such evidence as the Board deems relevant to the matter at issue and thereafter the Board shall either affirm or reconsider its decision.

[SECTION 7(i)(4)(iv)]

(iv) Other Board Actions. If the Board deems it necessary to protect the public interest and the integrity of gaming activities, the Board may take such action with immediate effect as it deems required, and shall thereupon provide notice and an opportunity to be heard to the affected person as soon as is reasonably practicable following such action.

(v) Hearing Officers. Any hearing conducted may at the direction of the Board be conducted by the Director or by one or more members of the Board designated by the Board for that purpose.

(vi) Notice to Commission. Following any license revocation hearing, the Board shall notify the Commission of its decision.

(5) Rules and Procedures. The Board may adopt such additional procedures and rules as it deems necessary or convenient to govern its affairs and which are consistent with this Ordinance and approved by the Council.

SECTION 8. PROHIBITED ACTS.

It shall be a violation of this Ordinance for any person to:

(a) Conduct or participate in any class II or class III gambling on Tribal lands other than at authorized and licensed gaming facilities.

(b) Receive, distribute, apply or divert any property, funds, proceeds, or other assets of a class II or class III gaming operation to the benefit of any person except as authorized by this Ordinance, a compact, or the Act.

(c) Tamper with any gaming device or equipment used in the conduct of any gaming operations with the intent to cause any person to win or lose any wager other than in accordance with the publicly-announced rules of the gaming operations.

[SECTION 8(d)]

(d) Do any other act in connection with the conduct of any gaming operation with the intent to affect the outcome of any wager other than in accordance with the publicly-announced rules of such gaming operation.

(e) To alter or misrepresent the outcome of any event on which wagers have been made after the outcome is made sure but before it is revealed to the players.

(f) To place, increase or decrease a bet or to determine the course of play after acquiring knowledge, not available to all players, of the outcome of the game or any event that affects the outcome of the game or which is the subject of the bet or to aid anyone in acquiring such knowledge for the purpose of placing, increasing or decreasing a bet or determining the course of play contingent upon that event or outcome. This includes past-posting, pressing, and pinching bets.

(g) To claim, collect or take, or attempt to claim, collect or take, money or anything of value in or from a gaming device or equipment, with intent to defraud, without having made a wager thereon, or to claim, collect or take an amount greater than the amount won.

(h) To manipulate, with the intent to cheat, any component of an electronic game of chance or gaming device in a manner contrary to the designed and normal operational purpose for the component, including, but not limited to manipulating a gaming device, with knowledge that the manipulation affects the outcome of the game or with knowledge of any event that affects the outcome of the game.

[SECTION 8(i)]

(i) Knowingly to use other than coins or tokens approved by the Board or other lawful coin, legal tender of the United States of America, or to use a coin not of the same denomination as the coin intended to be used in the gaming device.

(j) To possess, with the intent to use, any device to assist in projecting the outcome of the game, in keeping track of the cards played, in analyzing the probability of the occurrence of an event relating to the game, or in analyzing the strategy for playing or betting to be used in the game.

(k) To use any device or means to cheat, or to possess any such device while at the gaming facility.

(l) Knowingly to entice or induce another to go to any place where gaming is being conducted or operated in violation of the provisions of this ordinance, the Act, a compact, or other applicable law and regulation with the intent that the other person play or participate in that gaming.

(m) To engage in any activity requiring a license under this Ordinance, if the person does not currently hold a valid license.

SECTION 9. PENALTIES. Any person who violates any provision of this ordinance shall be subject to civil penalties, termination of employment by the gaming operation, denial or revocation of a license, exclusion from attendance at any gaming facility, or exclusion from Tribal lands if a non-member of the Tribe. The Board shall have the jurisdiction to impose any penalties on any person within the jurisdiction of the Tribe to the extent permitted by applicable federal and tribal law.

SECTION 10. TRIBAL COURT JURISDICTION. The Tribal Court shall have jurisdiction, to the extent not inconsistent with federal law, over all violations of

[SECTION 10, continued]

this Gaming Ordinance and over all persons who are parties to a management contract entered pursuant to this Ordinance, including agents, employees, owners, directors, and officers of such parties, and may, in addition to the penalties prescribed above, grant such other legal and equitable relief as is necessary and proper for the enforcement of this Gaming Ordinance and of the provisions of any management contract entered pursuant to this Ordinance, including but not limited to injunctive relief against acts in violation thereof.

SECTION 11. SEVERABILITY. In the event any section or provision of this Ordinance or its application to any particular activity is held to be invalid, the remaining sections and provisions of this Ordinance and the remaining applications of such section or provision shall continue in full force and effect.

SECTION 12. EFFECT OF HEADINGS. Article and section headings contained herein shall not be deemed to govern, limit, modify, or in any manner affect the scope, meaning, provisions, or intent of any article or section of the Ordinance.

SECTION 13. LIBERAL INTERPRETATION. The provisions of this Ordinance, being necessary for the welfare of the Jicarilla Apache Tribe and its members, shall be construed liberally to effect the purposes and objectives hereof.

SECTION 14. SOVEREIGN IMMUNITY. The Tribe does not in any way waive its sovereign immunity from suit in any court to contest the validity of this Ordinance. Decisions of the Board may be appealed to and shall be subject to appellate review in the Tribal Court with final appellate review by the Tribal Court

[SECTION 14, continued]

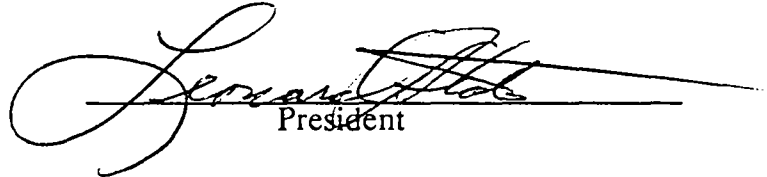
of Appeals. No decision of the Board shall be reversed unless the Tribal Court finds that the action taken was arbitrary, capricious or not in accordance with the law.

SECTION 15. AMENDMENTS. This ordinance may be amended only by majority vote of the Council at a meeting at which all members of the Council are present at the time of the vote.

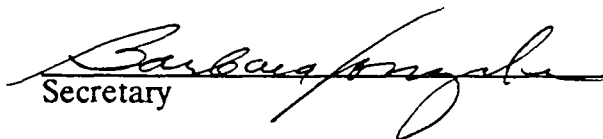
CERTIFICATION

The forgoing Ordinance was enacted by the Tribal Council of the Jicarilla Apache Tribe on the 24th day of MARCH, 1994, by a vote of 5 for, 0 against, and 0 abstaining, at a duly called meeting at which a quorum of the Tribal Council members was present.

JICARILLA APACHE TRIBE


President

ATTEST:


Secretary